

REMARKS

Claims 2-6 and 9-33 are present in this application. Claims 1, 7 and 8 are canceled. Claims 18-33 stand withdrawn. Claims 2 and 16 are currently amended. Reconsideration of the application is requested.

Rejections Under 35 U.S.C. § 112

The previous rejections under 35 USC § 112 have been withdrawn.

Rejections Under 35 USC § 102(b)

Claims 2-6 and 12-16 have been rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Buchwald et al. (U.S. Patent No. 6,307,087, hereinafter "Buchwald"). The Examiner suggests that the invention as claimed is anticipated when one reads the term "abstractable ligands" broadly citing column 7, lines 5 to 44 and column 31 lines 40 to column 32 line 32. This rejection is respectfully traversed. Applicant notes that claims 9, 10, and 11 are not rejected over Buchwald. Applicant has previously amended claims 2 and 16 to include the substituents for X listed in all three claims. Thus Applicant respectfully submits the rejection over Buchwald should have been withdrawn. However to further clarify the claims Applicant has deleted the phrase "an abstractable ligand" from claims 2 and 16. Applicant respectfully requests the rejection be withdrawn.

Rejection under 35 USC § 103(a)

Claims 9, 10 and 11 are rejected under 35 USC § 103(a) as being unpatentable over Buchwald in view of Qian (*Synthesis and Polymerization behavior of Various Substituted Half-Sandwich Titanium Complexes Cp'TiCl₂(OR*) as Catalysts for Syndiotactic Polystyrene*, J. Mol. Cat. 208, 2004, 45-54.). The Examiner admits that Buchwald does not disclose hydrocarbyls but suggests that Qian teaches substituting hydrocarbyls for halogens. Respectfully this is a broad overstatement that is simply not correct. First halogen ligands are polar and carry a different charge than hydrocarbyl ligands, such as methyl. Clearly they are not equivalent. Second, in many systems, a borate activator in combination with a halogenated catalyst precursor produces an inactive system while an alkylated precursor often, but not always, produces an active system.

Thus, halogens and hydrocarbyls are not equivalent, particularly in borate activator containing systems. Furthermore, Qian is directed to group 4 metal compounds used to make polyolefins. Applicant's invention is directed to group 8, 9, and 10 metals. One of ordinary skill in the art would not look to a Group 4 reference for Group 8, 9 and 10 guidance. Late transition metal alkyl complexes are harder to make than Group 4 alkyl complexes because they are significantly less stable. Thus the group 4 reference does not offer any significant insight for one of ordinary skill in the art.

In light of the above, Applicant respectfully request that the rejections be withdrawn.

Double Patenting

Claims 2-6 and 9-17 have been rejected under the judicially created doctrine of obvious type double patenting (ODP) over claims 1-20, 27-31 and 36-40 of USSN 10/692,827, filed October 24, 2003. Applicant respectfully disagrees. First, Applicant notes that a similar rejection is made in USSN 10/692,827, over the instant application. Applicant further notes that, with regard to obviousness type double patenting rejections, if the applications have the same effective filing date (which 10/692,827 and the instant application do) according to MPEP § 804 I.B.1, *“the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer.”*

Applicant submits that the instant Application is the base application for purposes of MPEP § 804 I.B.1, and the OPD rejection in the instant application should be withdrawn. In the event the Examiner does not withdraw the obviousness type double patenting rejection, Applicant respectfully requests that the Examiner make the determination of which application is the "base" application and which application is the "improvement" application.

Furthermore, Applicant notes that the claims in 10/692,827 are to a catalyst system (e.g. the compound and the activator) not to the catalyst compound alone, while the claims in the instant application are to the compound. The Examiner forced Applicant to withdraw similar claims in the instant application drawn to a catalyst system (Invention II) in the office action dated November 5, 2005 in the instant application. It is inconsistent for the Examiner to say that the catalyst system claims in the instant application are patentably distinct and must be withdrawn, yet the catalyst

system claims in another application are not. Applicant respectfully request that the rejection be withdrawn.

Related Application

This application relates to similar subject matter in USSN 10/692,827, filed October 24, 2003. The Examiner is encouraged to review both applications in light of each other.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and respectfully requests notice of such.

Please charge any deficiency in fees or credit any overpayments during the entire pendency of this case to Deposit Account No. 05-1712. Please also charge any petition fees, including fees for extensions of time necessary for the pendency of this case or copendency of this application with another application at any time to Deposit Account No. 05-1712.

Any comments or questions concerning the application can be directed to the undersigned at the telephone number given below.

Respectfully submitted,

Date: December 21, 2007 _____

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